



ZACHARY W. CARTER
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

Elissa B. Jacobs
Special Federal Litigation Division
212-356-3540
Facsimile: (212) 356-3509
ejacobs@law.nyc.gov

September 6, 2016

BY ECF

Honorable Richard J. Sullivan
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Bertolino v. City of New York, et al., 15 Civ. 7327(RJS)

Dear Judge Sullivan:

I am an attorney in the office of the Corporation Counsel of the City of New York, counsel for defendants' City of New York and Officers Castillo, Roca, Escalera, Labella Guilinello and Nunez. I write pursuant to Your Honor's Individual Rules to request an extension of time to Answer the Amended Complaint in this matter, *nunc pro tunc*, until Wednesday, September 8, 2016. Plaintiff's counsel, Jeffrey Rothman, does not consent and has informed me that he intends to file a motion for a default.

In March 2016, plaintiff filed a Second Amended Complaint in this action. In response, this office filed a pre-motion conference request, asking that portions of the Complaint be dismissed. The Court held a conference on May 6, 2016, wherein it denied defendants' motion and Ordered that discovery continue. In accordance with the Federal Rules of Civil Procedure, defendants' Answer was due fourteen days after that denial. However, I did not calendar the deadline and defendants failed to propound an answer. Today, September 6, 2016, defense counsel informed me that our answer was overdue and he intended to file for a default. Defendants respectfully request that they be permitted to file and answer to the Complaint that will allow the case to go forward on its merits. While defense counsel has not answer the complaint, defendants have been otherwise participating in and defending the action, through document discovery and depositions. Despite this plaintiff is suggesting that a default against the defendants, who are currently in the process of preparing for their depositions, is the appropriate response. [T]he extreme sanction of a default judgment [is] a weapon of last, rather than first, resort." Meenan v. Snow, 652 F.2d 274, 277 (2d Cir. 1981). Furthermore, as a matter of policy, there is a strong preference for resolution of disputes on their merits. Id. Plaintiff has not been prejudiced by this delay, and in fact apparently did not realize the lack of an answer until today.

Given these facts, I respectfully request that the Court grant defendants until Thursday, September 8, 2016 to answer the Complaint. I thank the Court for its attention to this matter.

Respectfully submitted,

/S/

Elissa B. Jacobs

cc: Jeffrey Rothmann, Esq. (by ECF)